HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No.26254 OF 2006

Between:

Hindustan Petroleum Corporation Limited,
Represented by its Senior Installation Manager,
Mr. P.B. Muralikrishna, S/o. P. Sathaiah,
Aged 45 years, Secunderabad Teriminal,
P.B No. 5, Ghatkesar, Ranga reddy District – 501 301

…Petitioner

AND

The Central Power Distribution Company of
Andhra Pradesh Limited, rep., by its Chairman
And Managing Director, Hyderabad and two others

...Respondents

: O R D E R :

Counsel for the petitioner : Shri M. Ravindranath

Reddy
Counsel for the Respondents : Shri Raghava Reddy for
Shri Sriramulu Reddy

04th January, 2007

Per G.S.SINGHVI, CJ

Hindustan Petroleum Corporation Limited has filed this petition through its Senior Installation Manager for quashing order dated 1-11-2006 vide which the Forum for Redressal of Consumer Grievances of APCPDCL, Hyderabad (respondent No.3) confirmed the proceedings dated 7-8-2006 issued by Superintending Engineer, APCPDCL (Operation), Ranga Reddy Circle (North), Gunrock, Secunderabad (respondent No.2) requiring the petitioner to pay Rs.15,00,233/- towards revised electricity charges for the period from February 2002 to January 2004.

The petitioner is engaged in refining and marketing of petroleum and petroleum products in India. In the year 2002, the petitioner established a terminal at Ghatkesar for storage and distribution of petroleum products in seven districts of the State of Andhra Pradesh. For this purpose, it obtained electric connection from the Central Power Distribution Company (respondent No.1). The connection of the petitioner was categorised in HT category-I (Industry) and accordingly it was charged for the electricity supplied by respondent No.1. In January, 2004, respondent No.2 revised the category of the petitioner's connection from HT category-I to HT category-II and accordingly raised the bills, which were duly paid. After about two years and seven months, respondent No.2 vide his letter dated 7-8-2006 called upon the petitioner to pay enhanced power bills for the period from February 2002 to January 2004 on the ground that its connection had been revised under HT category-II with effect from 31-1-2002. The petitioner protested against the additional demand and then filed a complaint before respondent No.3, which was registered as C.G. No.39/2006-2007. By the order under challenge, respondent No.3 dismissed the complaint.

The petitioner has challenged the order of the Forum mainly on the ground of violation of the rules of natural justice. In paragraph 12 of the affidavit filed by him, Shri P.B. Muralikrishna, Senior Installation Manager, has averred as under:

> "12. I submit that the order of the 3rd respondent is void ab-initio as it is violative of principles of natural justice for more than one reason (a) no notice or opportunity was provided to the petitioner to make its submissions, (b) the reply filed by the 1st respondent to the complaint of the petitioner was not furnished so as to make its submissions, (c) no reasons are assigned as to how the supply of the petitioner cannot be categorised in H.T. Category-I vis-à-vis the norms prescribed by the Andhra Pradesh Electricity Regulatory Commission. Hence, the said letter is liable to be set aside."

Shri M. Venkateshwarlu, Superintending Engineer (Operation), Ranga Reddy (North), APCPDCL has filed affidavit to contest the writ petition. He has averred that the revised bill was issued in accordance with the extant tariff. On the issue of denial of opportunity of hearing to the petitioner, Shri M. Venkateshwarlu has averred as under:

> "It is further submitted that Electricity Act, 2003 makes a provision under Sec.42 where if any consumer, who is aggrieved by non-redressal of his grievances under sub-section (5), may make a representation for the Redressal of his grievances to an authority to be known as Ombudsman to be appointed or designated by the State Commission. The petitioner made a representation to the 3rd respondent and the complaint was registered vide C.G.No.39/2006-07. The complaint of the petitioner came for hearing on 1st day of November, 2006 before the Forum for Redressal of Consumer Grievances of APCPDCL. The issues of the petitioner and respondent No.1 were taken meticulously into account. The petitioner was given a fair opportunity to file his rejoinder on the written submissions filed by the 2nd respondent vide Forum's letter No.39/2006-07/D.No.141/ 2006, dt.03.10.2006. A copy of the letter dt.3-10-2006, where positive proof of documents is available to show that remarks are communicated to the complainant/petitioner. (Material Index - P). The order is passed with reference to the provisions of regulations of Andhra

Pradesh Electricity Regulatory Commission. The copy of the Forum's order is enclosed (Material Index – P).

The petitioner has been given a fair opportunity by the Forum to represent his case before the OMBUDSMAN, if he is aggrieved by the Orders of the Forum within 30 days of the receipt of the order. The 3rd respondent has acted as per the rules and documentary evidences. The petitioner has acknowledged the 3rd respondent order on 27 November, 2006 and misrepresenting the facts to Hon'ble High Court that he has not received copy of the 3rd respondents. The decision of the Forum (the 3rd respondent) is without prejudice to the interest of the petitioner and the 1st respondent. The decision was arrived after taking the exhaustive submissions of both the parties in the case. The decision is on the lines of the guidelines issued by APERC on the subject of Power Tariff. The petitioner has not exhausted the channels before approaching the Honourable High Court. It is only after the disposal of the case, the 2nd respondent issued Demand Notice towards the payment of differential shortfall amount of Rs.15,00,233-00."

At the commencement of hearing, Shri M. Ravinder Reddy produced xerox copies of letter dated 29-12-2006 sent to him by Shri P.B. Muralikrishna, cover note sent by Despatch Clerk of respondent No.3 and receipt dated 27-12-2006 and argued that the order passed by respondent No.3 should be quashed because the petitioner was not given opportunity to controvert the submissions contained in the counter / remarks filed by respondent No.2. He further argued that even though the proceedings of respondent No.3 are not akin to judicial proceedings, the said respondent is duty bound to adhere to the basic rules of fairness and natural justice and its decision must reflect objective application of mind to the factual as well as legal issues raised by the parties. Learned counsel submitted that failure of respondent No.3 to ensure that copy of the comments / reply filed by respondent No.2 are supplied to the petitioner and not giving an opportunity to controvert the same should be treated as sufficient for nullifying order dated 1-11-2006. Learned counsel also criticised the

impugned order on the ground that it is totally devoid of reasons and does not satisfy the requirement of a speaking order.

Shri Raghava Reddy argued that the order passed by the Forum cannot be annulled on the ground of violation of the rules of natural justice because the representative of the petitioner was duly heard on 1-11-2006. He submitted that the Forum is not a judicial body and, therefore, absence of reasons cannot be made a ground for quashing the order under challenge.

We have considered the respective submissions.

Sub-sections (5) to (8) of Section 42 of the Electricity Act, 2003 (for short, 'the 2003 Act'), which provide for appointment of a Forum for redressal of the grievances of the consumers and appointment of Ombudsman, read as under:

> **42. Duties of distribution licensee and open access:**
> xxx xxx xxx
> (5) Every distribution licensee shall, within six months from the appointed date or date of grant of licence, whichever is earlier, establish a forum for redressal of grievances of the consumers in accordance with the guidelines as may be specified by the State Commission.
>
> (6) Any consumer, who is aggrieved by non-redressal of his grievances under sub-sec. (5), may make a representation for the redressal of his grievance to an authority to be known as Ombudsman to be appointed or designated by the State Commission.
>
> (7) The Ombudsman shall settle the grievance of the consumer within such time and in such manner as may be specified by the State Commission.
>
> (8) The provisions of sub-sections (5), (6) and (7) shall be without prejudice to right which the consumer may have apart from the rights, conferred upon him by those sub-sections."

In exercise of the power vested in it under sub-sections (5), (6)

and (7) of Section 42 read with clauses (r) and (s) of sub-section (2) of Section 181 of the 2003 Act, Andhra Pradesh Regulatory Commission framed the Andhra Pradesh Electricity Regulatory Commission (Establishment of Forum and Vidyut Ombudsman for Redressal of Grievances of the Consumers) Regulation, 2004 (for short, 'the Regulations') and thereby laid down the guidelines to the licensees for setting up the Forum for redressal of the grievances of the consumers. Clause (3) of the Regulations provides for constitution of the Forum, Clause (4) contains provision for removal of any member of the Forum, and Clause (5) enumerates the functions of the Forum. Sub-clauses (7) to (11) of Clause (5) of the Regulations, which too have bearing on the decision of this petition, read as under:

"**5. FUNCTIONS OF THE FORUM:**

xxx xxx xxx

7) The Forum shall receive the complaint of the consumer forwarded to or filed with the Forum so long as such complaint is in writing and the Forum shall not insist or prescribe any format for filing of the complaint or for entertaining it.

8) The office of the Forum shall issue due acknowledgment of the receipt of the complaint to the Complainant.

9) The Forum shall maintain true and correct records of all Complaints received by the Forum from time to time.

10) The Forum shall duly lay down the procedure to deal with the complaints with the approval of the Commission.

11) a) The Forum shall decide the Complaint expeditiously and shall communicate its decision to the Complainant within a period not exceeding 45 days of the receipt of the complaint. The Forum shall give the reasons in support of its decisions. The views, if any, expressed by the Co-opted Member shall also be communicated to the Complainant.

b) The Forum may pass such interim orders on the request of the Complainant as the Forum considers appropriate pending the final decision on the complaint.

c) The Licensee shall duly implement the decisions and orders of the Forum made in favour of the complainant.

xxx xxx xxx"

A conjoint reading of Section 42 (5) and sub-clauses (7) to (11) of Clause 5 of the Regulations makes it clear that the Forum established by the licensee has to decide the grievance of the consumer by adopting a procedure which meets the requirement of fairness and is consistent with the basics of natural justice. The requirement of recording of reasons, which is an integral part of the rules of natural justice, has been statutorily engrafted in sub-clause (11) of Clause 5 of the Regulations.

In the light of the above, we shall now consider whether the order impugned in the writ petition is in consonance with the scheme of Section 42 (5) and the Regulations framed by the Regulatory Commission. A reading of that order shows that after adverting to the substratum of the complaint lodged by the petitioner and reply submitted by respondent No.2, respondent No.3 framed the following issues:

1) Whether there is any deficiency of service/supply as per Cl.2 (d) of Regulation 1 of APERC?
2) Whether the classification of the service under HT Category – II is on order?

In paragraph 4 of its order, respondent No.3 recorded one line observations qua both the issues and then concluded that there is neither deficiency in supply nor in service brought to the notice of the Forum.

In our opinion, order passed by the Forum is liable to be quashed on the ground of violation of two facets of the rules of natural justice. Firstly, the factual matrix of the case show that the copy of reply / comments filed by respondent Nos.1 and 2 was not made available to the petitioner and, on that account, its representative could not effectively make submissions in support of the complaint. Secondly, the order passed by the Forum is totally devoid of reasons. The one line conclusion recorded by respondent No.3 with reference

to two issues framed by it does not show application of mind to the contentions urged on behalf of the petitioner. It is also not discernible as to why the plea set up by the petitioner did not find favour with the Forum. Therefore, it must be held that the order under challenge does not meet the requirement of a 'speaking order'.

In the result, the writ petition is allowed. Order dated 1-11-2006 passed by respondent No. 3 is quashed and the matter is remitted to respondent No.3 for fresh adjudication of the complaint filed by the petitioner. It is expected that respondent No.3 will hear the representatives of the parties and then pass fresh order by recording reasons, howsoever briefly to deal with the issues raised before it.

G.S. SINGHVI, C.J.

January 04, 2007

C.V. NAGARJUNA REDDY, J.

svs